

Lands, Whether Platting Necessary Before Sale. Fourth Class Lands, When to Be Platted Prior to Sale. Sale of Lands of Fourth Class. How Made. Public Lands, of Fourth Class.

Under the law of this state fourth class land, as described in the Constitution, must be actually platted prior to sale.

July 14, 1915.

State Board of Land Commissioners,
Helena, Montana.

Gentlemen:

I acknowledge receipt of your inquiry submitting the question:

May the lands designated in Article XVII, State Constitution as belonging to the fourth classification therein made, be sold in five acre lots or tracts without actual survey and plat?

The provisions of the constitution referred to in Section 1 of said Article merely designate what constitutes lands of the fourth class. Section 2 provides that such lands

“shall be sold in * * * lots of not more than five acres each.”

This provision of the Constitution does not in specific terms at least require any actual survey or platting, but the statute is more specific. In Section 29 of Chapter 147, Session Laws of 1909, lands of the fourth class are apparently, or at least authority is given to the board to make two classifications, to-wit: lands lying within or adjacent to a city or town; such lands may be surveyed and laid off in lots and blocks, etc. It is further provided with reference to lands not within or adjacent to a city or town:

“may be divided into lots or tracts of five acres each and platted to sell, etc.”

Further on in the same section the terms and phrases “subdivided” and “platted and surveyed” are used with reference to those lands. The word “platted” itself would indicate a marking or designation of boundaries in some form, but the words “survey” and “subdivision” undoubtedly mean some form of marking and designation. Under the provisions of the Statute it would seem that these lands should be surveyed, so that the boundaries thereof may be marked or ascertained, and that a mere paper survey would not be a compliance with the intent of the law.

Yours very truly,
J. B. POINDEXTER,
Attorney General.